IN THE

Supreme Court of the United States

October Term, 1976.

No. 76-1456

WILLIAM ROBERT KLEIN,

Petitioner,

vs.

DAVID N. EDELSTEIN, Chief Judge United States District Court for the Southern District of New York,

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

Reply of Petitioner to Opposition Memorandum of Solicitor General.

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REPLY OF PETITIONER
to OPPOSITIOM MEMO-
RANDUM OF SOLICITOR -
GENERAL

Respondent's Memorandum is regrettably regressive. It recedes from acknowledgments already gained by Petitioner, in advancement of his cause, for vacature of the ex-parte order of disbarment by the Chief Judge-respondent, that the underlying state court order of disbarment dated June 29,1965, was subject to constitutional infirmity on said date of issue.

Those acknowledgments appear in the record, from the Chief Judge's own opinion, unanimously affirmed by the three Circuit Court Judges, the Brief of the

Solicitor-General's subordinate Assistant United States Attorney for the Southern District of New York,and the Chief Judge's Report,filed with his Office dated September 9,1968, by the United States Attorney for the Eastern District of New York, Hon.Joseph P.Hoey,and his subscribed Chief Asst.Hon. Joseph V.Mc Carthy, also thereon.

That Report,filed in the Court(65 M 811) followed a three-year study of the State Court records and proceedings,both Appellate Division and Court of Appeals,as recited in said Report, by said U.S.Attorney in the Eastern District,functioning as an avowed representative of the Department of Justice. His emphasis ,as appears in the record, was upon that "Justice " significance, in declining to prosecute upon the basis of a state judgment of such infirm character.

Petitioner submits that the Opposition Memorandum papers over the essentials of Petitioner's Brief, continuing certain myths,which were exposed by the Eastern District U.S.Attorney's Report to his Chief Judge, back in 1968.

For example, it is repeated by each adverse opinion,and position, that the Petitioner failed to deny the charges,and thus no triable issues were presented by the Petitioner in his first demurrer response of 11 objections of January 6,1965, to Prosecutor's Petition of December ,1964.

The U.S.Attorney showed that at least three triable issues were raised in Petitioner's Answer; that the right to make answer after denial of demurrer,survived;and that such judgment was incurable except by vacature, and could not serve as basis for Federal prosecution or removal or any further state proceedings.

Thus also,this Opposition Memorandum,brusquely dismisses the supreme authority of the the two Cases** of this Court(pp.15-19),which in 1968, had been anticipated by the Eastern District Court and Prosecutors, when on May 20,1969, the Court dismissed without prejudice its own Order to Show Cause ,and Petition of the U.S.Attorney,vacated its temporary suspension order,and restored Petitioner to membership in good standing in that Bar.

Thus also,this Opposition Memorandum ignored the fact that most of the charges and findings of guilt which "required" disbarment,according to the State Court's Opinion of June 29,1965, had already been dismissed on State Prosecutions and State Courts' own motions,and that thus,the said predicate judgment recited in the respondent Chief Judge's order of disbarment of September 25,1974 had been rendered obsolete in any event.

Again, also,the Memorandum recites at length the controlling Federal Court General Rule 5 d and passes over the fact that each of the prescriptions of procedure ,therein essentially defined as due process, for any discipline to follow,was violated by the respondent Chief Judge.

The author's cavalier treatment of the State Court of Appeals,in "disregarding" a constitutional fundamental of notice of charge(p.3),when affirming,includes the oversight by the author of the supreme force of the Gompers v.Busk Stove, 221 US 408,440, requiring the vacature of any judgment of punishment,based on a collective finding of guilt, when one finding and charge is later vacated.

** the Armstrong and Fuentes cases

It must also be noted in connection with the foregoing observations, that the Opinion of the Chief Judge (App.C,p.32,) took great pains to point out that the State Court,when issuing the judgment,on June 29,1965,(at p.33) had incorporated the opinion by reference bearing even date. (Appellee's App. AA 345, 348).

Respectfully submitted

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Petitioner.